

Access to Justice in Eastern Europe

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Editor-in-Chief's Note

ABOUT ISSUE 4 OF 2024 AND UKRAINE'S PROGRESS TOWARD EU INTEGRATION

As Editor-in-Chief, I am honored to present this issue of *Access to Justice in Eastern Europe*, a valuable scholarly work that advances the field of legal science.

In this editorial, along with emphasizing especially pertinent articles, I aim to offer reflections on Ukraine's significant progress in its European integration efforts. The formal initiation of negotiations on Chapter 23—Justice and Fundamental Rights—marks a critical milestone in Ukraine's alignment with EU standards and commitment to advancing judicial reforms. The focus on Chapter 23 underscores Ukraine's dedication to enhancing judicial independence, reinforcing the rule of law, and safeguarding fundamental rights—essential steps toward EU accession.

Given Ukraine's transformative reform agenda and the Ukraine Facility Plan aimed at aligning its judicial infrastructure, procedural standards, and legal institutions with *acquis*, we encourage further submissions that explore these crucial developments. Future issues of *Access to Justice in Eastern Europe* seek to engage with the complexities of Ukraine's legal modernization, offering a platform for scholarly debate on the challenges and opportunities associated with adapting national legislation of other candidate-states to meet the rigorous standards of the EU.

We invite contributions that critically examine the ongoing judicial reforms in Ukraine, especially in the context of Chapter 23, and analyze the impact of these reforms on judicial independence, rule of law, and fundamental rights. Submissions

that provide comparative perspectives, assess specific procedural adaptations, or explore the broader implications for Eastern European legal systems are especially welcome. Through this dialogue, we aim to deepen understanding of Ukraine's integration journey and enrich the broader discourse on access to justice and legal reform in the region.

Ukraine's journey toward EU integration is rooted in historical ties with Europe and a commitment to establishing a transparent and effective judicial system aligned with European standards. Since declaring independence in 1991, Ukraine has aimed to move beyond foreign-imposed legal structures from occupation periods, including Soviet influences that introduced centralized judicial control, dependence on hierarchical courts, and interference from state bodies in judicial proceedings.

Joining the Council of Europe in 1995 laid the foundation for Ukraine's alignment with European law. Ratifying the European Convention on Human Rights in 1997 further demonstrated this commitment, as ECHR case law became a significant influence on national jurisprudence. The European Court of Human Rights has since been instrumental in prompting judicial reforms, particularly concerning the non-enforcement of court decisions, delays in legal proceedings, and the need for judicial independence.

The 2014 EU-Ukraine Association Agreement marked a turning point by establishing a framework for harmonizing Ukrainian legislation with EU laws, prioritizing justice reforms. The Free and Comprehensive Trade Area with the EU was seen as foundational to further integration, necessitating enhanced judicial efficiency, independence, and anti-corruption efforts. These reforms reshaped judicial processes, revised procedural regulations, and led to substantive changes within the Supreme Court.

Despite these efforts, Soviet-era legacies persist, impacting judicial functionality and public perception. The period of Soviet occupation dismantled the independent legal profession, established state control over judges, and hindered judicial impartiality. These historical burdens demand comprehensive reforms as Ukraine advances toward European standards.

European law, particularly ECtHR case law, has been pivotal in transforming Ukrainian civil justice. For instance, abolishing the supervisory review protest—a procedure allowing officials to overturn final court decisions—significantly shifted toward judicial integrity. Other ECtHR cases addressed critical issues like unreasonable delays and

repeated appellate reviews, which led to structural reforms, including simplified procedures for resolving straightforward cases.

In response to criticisms regarding non-execution of court decisions, a systemic issue ranking Ukraine third in ECtHR appeals, landmark cases have catalyzed reforms in enforcement systems to ensure Convention compliance and restore public confidence in the legal system's effectiveness.

In recent years, Ukraine has intensified efforts to modernize its judiciary, emphasizing digitalization. Platforms like the Unified Judicial Information and Telecommunication System and the Unified State Register of Judgments have enhanced transparency and accessibility, supporting real-time document access, case tracking, and video conferencing capabilities. Despite gradual implementation, these efforts reflect positive progress. The government's "DIIA" platform, which provides citizens with access to legal services, exemplifies Ukraine's commitment to accessible, transparent justice.

Significant progress has been made in modernizing procedural law and aligning with European standards, though challenges remain. The Ukrainian judiciary must address the influence of entrenched practices and institutional limitations. Integration with the broader Genuine European area of justice, aligning Ukraine's legal rights and obligations with those of EU member states, remains a future goal. Judicial cooperation, mutual recognition of foreign judgments, and harmonization of legal frameworks will require continued dedication and collaboration.

Through sustained reforms, Ukraine is transforming its judicial landscape, aligning with principles of transparency, independence, and efficiency that define the EU's legal order. These reforms, while challenging, are vital for Ukraine's continued progress toward EU membership, contributing to the country's broader goals of stability, rule of law, and integration within the European community.

Chapter 23 represents both opportunities and challenges. Reforms target judicial independence, efficiency, and transparency—key areas for strengthening public trust. The Facility Plan's Component I includes updates to bankruptcy laws and enforcement of court decisions, aligning with EU standards such as Directive (EU) 2019/1023 on preventive restructuring. Additional initiatives focus on digitalization, including UJITS, to streamline court operations and improve public access to justice.

Though, in our opinion, a critical obstacle to implementing these judicial reforms lies in the human resources required to support them effectively. The success of new judicial tools and procedures depends heavily on court employees and judges, who, over three decades of independence, have faced persistent instability—from shifts in procedural legislation to fluctuating political will and trust in the judiciary. Although there has been substantial reshaping of high court staff, around seven hundred first-instance and appellate courts still rely on judges whose careers began in the turbulent 1990s, a period marked by inadequate selection processes and low standards for judicial qualifications.

This continuity presents a challenge: without further investment in judicial training and development, the transformative concepts and procedural reforms risk remaining largely theoretical. A robust commitment to human resource support is essential to fully actualize these reforms and to bring Ukraine closer to EU integration. By fostering a skilled and adaptable judiciary, Ukraine can better navigate the demands of European standards and build a resilient judicial infrastructure capable of sustaining long-term reform.

Our journal issue highlights legal developments in multiple countries, including Albania, Austria, Bosnia and Herzegovina, Kazakhstan, Kosovo, Lithuania, Romania, Slovakia, and Ukraine. We explore contributions from Vietnam, notably from **Khoat Van Nguyen** on the need for globally harmonized sanctions for prosecuting transnational commercial crimes, and from **Oanh Cao** and **Tuan Vu Van** on proposing restorative justice frameworks. These contributions broaden our journal's scope and hold valuable insights for our readership.

In this issue, I draw attention to two standout articles from Ukraine. The first, by **Mykola Rubashchenko** and **Nadiia Shulzhenko**, critically examines Ukraine's criminalization of denial crimes within the broader European trend of historical negationism laws. Their analysis addresses the tension between protecting historical memory and preserving freedom of expression, with Ukraine's distinct legislative approach reflecting its geopolitical context. The simultaneous enactment of conflicting laws has led to inconsistencies within the Ukrainian Criminal Code, and the authors provide constructive recommendations for addressing these challenges as Ukraine aligns its legal system with EU standards.

The second article, by **Ivan Yakoviyk**, **Sergiy Kharytonov** and **Oleksiy Zaytsev**, reopens the debate on combatant immunity amid the Russian-Ukrainian war. They

rigorously examine legal and ethical aspects of this doctrine, particularly regarding Ukraine's international obligations. Their analysis explores the combatant's status and privileges under IHL, critically assesses Ukraine's legal obligations, and addresses the liability of defectors. This article significantly contributes to discussions on combatant immunity, balancing legal obligations and ethical considerations in wartime.

Additionally, **Mohamad Almohawes's** essay on fair trial standards in the al-Anfal and Srebrenica genocide trials examines the disparities in trial approaches for similar crimes. Almohawes argues for a unified framework under the ICC, addressing inconsistencies to ensure equal justice and fair trial standards for international crimes.

Finally, this issue's case notes provide insights into Ukraine's evolving legal landscape. **Oksana Khotynska-Nor** and **Kyrylo Legkykh's** study examines how Ukrainian judges address conflicts of law, offering an empirical perspective on the complexities of the Ukrainian legal system. **Viktoriia Ivanova's** note highlights Ukraine's strategy for restoring property rights to those affected by Russian aggression, detailing the initial legal measures aimed at redress and recovery.

Let us also recognize the dedication of our managing editors, Mag. **Yuliia Hartman** and Mag. **Bogdana Zagrebelna**, and our language editors, **Julie Bold** and **Olha Samofal**. We extend gratitude to our authors and reviewers, whose expertise and trust in our publication ensure its scholarly rigor. This year, our team has shown unwavering commitment to enhancing editorial professionalism, including participation in EASE Editorial School and PUBMET conference, updating our reviewer guidelines, and launching our annual AJEE meeting to foster engagement with our community.

Looking ahead, we have ambitious plans to further our mission, and we wish continued success to our dedicated audience, our exceptional team, and our valued authors.

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